

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

WANDA LEE LEHMAN,
Plaintiff/Appellant,

Shelby Chancery No. D19690-3 R.D.
C.A. No. 02A01-9511-CH-00258

v.

Hon. D. J. Alissandratos, Chancellor

AARON RUSSELL LEHMAN,
Defendant/Appellee.

KELLY STARK, McLean & Stark, Memphis, Attorney for Appellant.

TED I. JONES, Memphis, Attorney for Appellee.

FILED

May 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

REVERSED

Opinion Filed:

MEMORANDUM OPINION¹

TOMLIN, Sr. J.

This is a domestic relations case. Wanda Lee Lehman (“plaintiff”) was granted an absolute divorce from Aaron Russell Lehman (“defendant”) in the Chancery Court of Shelby County on September 17, 1992. In that decree the chancellor awarded plaintiff alimony in futuro in the amount of \$500.00 per month. Because of plaintiff’s poor health and the low monthly mortgage payment, plaintiff was permitted to live in the marital home until it was sold. In the event that the home was sold, either by agreement of the parties or by court order, the decree provided that plaintiff would receive sixty-five (65%) percent of the net equity in the home with defendant receiving the remaining thirty-five (35%) percent. The decree also provided that in the event plaintiff died while residing in the marital home, title to the property should pass to defendant in fee. The decree also made other provisions not relevant to the issue here.

¹**Rule 10(b) (Court of Appeals). Memorandum Opinion.** The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

On October 14, 1992, plaintiff filed a motion pursuant to T.R.C.P. 59 to alter or amend the judgment. The relief sought by plaintiff was as follows:

1. In support of this Motion, the Plaintiff would respectfully request that the Court amend its judgment to provide for a clear statement as to and in whose name the title to the real property will be held in that the title of said property should vest in the Plaintiff with a right of survivorship or remain in an interest to be held by Defendant, Aaron Russell Lehman, and an equitable lien in favor of Aaron Russell Lehman in the amount of 35% of the equity in the real property to be received in the event of the sale of the property during the lifetime of Wanda Lee Lehman.

2. Further, in the event that the Court did not intend to transfer the title in fee to Ms. Lehman, some provision be made such that, in the event that Aaron Russell Lehman predeceases Wanda Lee Lehman, that all right, title, interest and equity in the property will transfer and vest in Wanda Lee Lehman in fee. This would mirror the provision currently in the Order that provides that, in the event Wanda Lee Lehman predeceases Aaron Russell Lehman, that he will receive all right, title and interest in the property.

3. That, in light of the equity interest that Aaron Russell Lehman will hold in the property, we would ask the Court to amend the judgment to provide that Aaron Russell Lehman will share 35% of any costs of maintenance necessary for the preservation of the property, such monies to be expended at the discretion of Wanda Lee Lehman but, only for necessary maintenance to the property.

4. That the Court provide that, to secure the payment of alimony in futuro, Aaron Russell Lehman maintain a life insurance policy in a sufficient amount of money to be determined by the Court naming Wanda Lee Lehman as irrevocable beneficiary.

The chancellor entered an order amending the final divorce decree on March 23, 1993. This amended judgment read in pertinent part as follows:

1. The parties shall hold legal title to the marital property, sixty-five percent (65%) to be held by the Wife, Wanda L. Lehman, and thirty-five percent (35%) to be held by the Husband, Aaron R. Lehman, as joint tenants with right of survivorship. Upon the sale of this property, the net equity will be divided between that parties in those proportions. In the event that either party predeceases the other, the survivor shall receive all right, title, and interest of the deceased party, free of the claims of any other heirs of that deceased party. Neither party shall be free to transfer or convey their interest in the property during their lifetime or by testamentary instrument.

2. Plaintiff is responsible for timely making all mortgage installment notes, and all taxes and insurances on said property. In consideration of the respective interest of the parties in the real property, they will share all maintenance expenses for the real property in relationship to their interest in said property. Therefore, Wanda L. Lehman will pay sixty-five percent (65%) of all necessary maintenance to the real property and Aaron Lee

Lehman will pay thirty-five percent (35%) of the cost of all necessary maintenance to the property for its preservation. Both parties will cooperate and execute all documents necessary to make necessary repairs and improvements to the property for its preservation.

No appeal was taken from this amendment to the final decree. On February 1, 1995, plaintiff filed a pleading entitled “Petition for Clarification of Amendment to Final Decree of Divorce and for Scire Facias and Contempt.” Plaintiff’s petition reads in part as follows:

6. Petitioner is unclear as to whether the “alimony” awarded to her is all alimony, or whether part of it is Respondent’s payment of his thirty five percent (35%) share of the real property.

7. Petitioner would aver that if the \$500 per month is all alimony, she is paying for Respondent’s thirty five percent (35%) interest in the real property, and Respondent will receive a windfall upon the sale of the house.

8. Petitioner would further aver that if the \$500 per month is both alimony and Respondent’s payment for his interest in the property, then she requests that he pay for his share directly to the proper entities, and increase Petitioner’s alimony to \$500 per month, from which she will pay her sixty five percent (65%) share of the mortgage.

In her prayer for relief, plaintiff asked that defendant be required to pay his share of the mortgage, interest, taxes, and insurance for the jointly-owned property directly to the respective obligee—the mortgage company, insurance company, and taxing authority.

Following a reply by defendant, a hearing was held in which both parties testified. On March 21, 1995, the chancellor advised the parties by letter of his decision concerning the Petition for Clarification. The chancellor ruled as follows:

Dear Counsel:

In this cause, Ms. Lehman has asked for a clarification of the Final Decree of Divorce, and has also petitioned the Court to hold Mr. Lehman in contempt for failing to show proof of his life insurance and the amount thereof.

The point of clarification is whether Mr. Lehman is to pay 35% of the house note in the amount of \$105.63 each month, in addition to his \$500 alimony payment. In answer to this, the Court is of the opinion that he

should make the payment of \$105.63, reflecting 35% of the house note, and in addition, \$400 in alimony. Actually, Mr. Lehman's income is basically the same as it was at the time of the Final Decree, but Ms. Lehman's expenses have gone up and her physical condition has worsened. The mortgage payment has also increased slightly. The Court is further of the opinion that Ms. Lehman is totally disabled.

The letter was incorporated into an order entitled "Order Clarifying Final Decree," which was duly entered and from which plaintiff has appealed to this court.

In the opinion of this court, the proceedings generated by the Petition for Clarification of the Amended Decree resulting in a hearing and the Order of Clarification of the chancellor entered on July 13, 1995 are a nullity, and are of no effect. The amended final decree entered on March 23, 1993, pursuant to a timely filed motion to alter or amend the judgment, became a final judgment of the court as of April 22, 1993, inasmuch as no appeal was taken by either party. Pursuant to T.C.A. § 36-5-101 (Supp. 1995), a court may, upon application of either party, order an increase or decrease in alimony, but only upon a showing of a substantial and material change of circumstances. The change of circumstances warranting the modification of alimony must have occurred since the entry of the final decree of divorce. See Brewer v. Brewer, 869 S.W.2d 928, 935 (Tenn. App. 1993). In light of the record in this case, we think that it would be stretching the pleadings and the proceedings herein beyond the bounds of reason to consider the petition filed herein to seek the modification of a decree based upon a subsequent change in material circumstances. The thrust of plaintiff's petition, the clear tone of the chancellor's letter to both counsel, and the style of the order entered by the trial court clearly show that this matter was being treated as a proceeding for clarification of a final decree. The unfortunate part about this is that the final decree was just that—final—and was not subject to "clarification."

Having declared these proceedings to being a nullity, the affairs of the parties relative to this divorce proceeding are to be governed by the provisions of the final decree of divorce entered September 17, 1992, as amended by the order the chancellor entered

March 23, 1993.

Accordingly, the trial court's order of July 13, 1995 is reversed. Plaintiff's petition is dismissed and these proceedings are held for naught. Costs in this cause on appeal are taxed one-half to plaintiff and one-half to defendant, for which execution may issue if necessary.

TOMLIN, Sr. J.

CRAWFORD, P.J.

(CONCURS)

HIGHERS, J.

(CONCURS)